

FCC MAIL SECTION

Federal Communications Commission

DA 99-1284

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DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-72
Table of Allotments,)	RM-9017
FM Broadcast Stations.)	
(Mullins and Briarcliffe Acres,)	
South Carolina))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 23, 1999;

Released: July 2, 1999

By the Chief, Allocations Branch:

1. At the request of Atlantic Broadcasting Co., Inc. ("petitioner"), licensee of Station WWSK(FM), Channel 296C2, Mullins, South Carolina, the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 2942 (1997), proposing the reallocation of Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina, and the modification of Station WWSK(FM)'s license accordingly.¹ Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Briarcliffe Acres. No other comments were received.

2. The proposed reallocation of Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). As stated in the Notice, Briarcliffe Acres is an incorporated community in Horry County, with a population of 552² persons.

¹We note that the license of Station WWSK(FM) was assigned from Atlantic Broadcasting Co., Inc., to Root Communications License Company, L.P. (formerly Root Communications Group, L.P.) on May 14, 1997, and was consummated on July 1, 1997.

²All population figures are taken from the 1990 U.S. Census.

Petitioner submits a letter on behalf of the mayor and town council stating that even though Briarcliffe Acres does not allow commercial activities within its corporate limits, the community is supportive of Station WWSK(FM)'s request to name Briarcliffe Acres as its new community of license. The letter also states that Briarcliffe Acres has its own police chief, town council, and mayor. It has defined boundaries and provides services to its citizens, including police protection, solid waste disposal and fire protection. Therefore, petitioner asserts that Briarcliffe Acres possesses the requisite "social, economic and cultural components that are commonly associated with community status," citing Semora, North Carolina, 5 FCC Rcd 934 (1990); and Trade, Tennessee and Beech Mountain, North Carolina 6 FCC Rcd 5835 (1991). Pursuant to the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982),³ petitioner claims the reallotment of Channel 296C2 to Briarcliffe Acres would result in a preferential arrangement of allotments since it would provide the community with its first local aural transmission service, without depriving Mullins (population 5,910) of its sole local aural transmission service.⁴ Finally, petitioner states that Briarcliffe Acres is not located in an urbanized area.

3. In the Notice, petitioner was requested to provide a sufficient showing to demonstrate that Briarcliffe Acres warrants a first local service preference since Station WWSK(FM) is located six kilometers (4 miles) from the Myrtle Beach Urbanized Area, and will provide a 70 dBu signal over 67% of that Urbanized Area. In response to the request, petitioner reiterates its showing above, and states that the most significant showing of lack of interdependence with Myrtle Beach, is the fact that Briarcliffe Acres residents, except for water, use neither Myrtle Beach nor Horry County facilities for their municipal services. Briarcliffe Acres has its own police department and receive other municipal services, such as fire protection, trash removal, etc. by hiring private contractors. Petitioner asserts that the essential element in Briarcliffe Acres' status as a separate community is that the residents have determined not only to be self-governing by electing a mayor and council, but also not to be interdependent by paying for their own municipal services such as police, trash hauling, etc. Finally, petitioner asserts that a community need not possess every facet of the Tuck⁵ test to constitute a separate and independent community entitled to a first local service preference, citing Semora, supra.

³The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁴Petitioner states that Mullins is also served by Station WJAY(AM).

⁵See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

4. Based the information before us, we find that petitioner has sufficiently demonstrated that Briarcliffe Acres is a separate and independent community from the Myrtle Beach Urbanized Area and is entitled to a first local preference.⁶ Therefore, we believe the public interest would be served by reallocating Channel 296C2 from Mullins to Briarcliffe Acres, South Carolina, as the community's first local aural transmission service, and modifying Station WWSK(FM)'S(FM)'s license accordingly. Specifically, the reallocation would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See Change of Community, supra. Under those procedures, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities.⁷ See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

5. In making this analysis, we note that Briarcliffe Acres would receive a first local service which triggers priority (3). On the other hand, the reallocation would not deprive Mullins of its sole local service, since Station WJAY(FM) would remain licensed to the community. Moreover, since Station WWSK(FM) does not seek to relocate its transmitter site, the reallocation will not result in any gain or loss areas, and the station will continue to provide Mullins with city-grade (70 dBu) coverage.

Technical Summary

6. An engineering analysis has determined that Channel 296C2 can be reallocated to Briarcliffe Acres in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.7 kilometers (16 miles) northwest at petitioner's authorized site.⁸ In accordance with Section 1.420(i) of the Commission's Rules, we modify Station WWSK(FM)'s license to specify operation on Channel 296C2 at Briarcliffe Acres, South Carolina, as its new community of license.

7. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 16, 1999 the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect

⁶In determining whether a suburban community should be granted a first local service preference, the Commission has stated that it will rely primarily on three criteria--signal population coverage, the size of the suburban community relative to the adjacent city, and the interdependence of the suburban community with the central city.

⁷The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁸The coordinates for Channel 296C2 at Briarcliffe Acres are 33-56-14 North Latitude and 78-57-53 West Longitude.

to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Mullins, South Carolina	---
Briarcliffe Acres, South Carolina	296C2

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Root Communications License Company, L.P., for Station WWSK(FM), Mullins, South Carolina, IS MODIFIED to specify operation on Channel 296C2 at Briarcliffe Acres, South Carolina, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station WWSK(FM)'s license, BLH-950601KB, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-950601KB, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

9. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Root Communications License Company, L.P., licensee of Station WWSK(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

10. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Root Communications License Company, L.P.
139 Executive Circle, Suite 203
Daytona Beach, Florida 32114
(Licensee of Station WWSK(FM))

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau